

Patenting Examining Procedure (MPEP) §716.10 does not require a Declaration under the present circumstances. That is, note that MPEP §716.10 makes various references to a Declaration, including reference to "an unequivocal declaration" by S in the first paragraph of MPEP §716.10. However, in other parts of MPEP §716.10, an uncontradicted "unequivocal statement" is set forth. Clearly, if a Declaration were required, the MPEP §716.10 would have consistently referred to an "unequivocal declaration". By referring to an uncontradicted "unequivocal statement", it is respectfully submitted that a Declaration is not required, and, for example, an unequivocal "statement" is all that is needed.

In any event, to facilitate proceedings in connection with the above-identified application, enclosed please find a Declaration under 37 CFR 1.132, signed by each of the inventors named in the above-identified application.

Initially, entry of the enclosed Declaration is respectfully requested, notwithstanding the finality of the Office Action mailed March 21, 2006. In this regard, note the statement by the Examiner in the first paragraph on page 3 of the Office Action mailed March 21, 2006, that the "unequivocal statement" of inventorship "must be presented in the form of a Declaration signed by the inventors". It is respectfully submitted that especially in view thereof, the presently submitted Declaration is timely. Moreover, it is respectfully submitted that this Declaration does not raise any new issues, and clearly materially limits issues remaining in the above-identified application. Furthermore, it is respectfully submitted that consideration of this Declaration does not constitute an undue burden on the Examiner.

In view of the foregoing, it is respectfully submitted that entry of the enclosed Declaration is proper.

It is respectfully submitted that, as required by the Examiner, the enclosed Declaration is an "unequivocal statement" by the inventors named in the present application, that the subject matter being relied upon by the Examiner from U.S. Patent No. 6,416,931, is not subject matter "by another"; and that, accordingly, U.S. Patent No. 6,416,931 is not prior art under 35 USC §102(e). In this regard, attention is respectfully directed to Items 4-6 on pages 2 and 3 of the enclosed Declaration, especially Item 4 thereof, stating that insofar as the disclosure in U.S. Patent No. 6,416,931, including specific descriptions in columns 101 and 102 thereof, describes the subject matter of claims 1 and 2 of the above-identified application, this disclosure in No. 6,416,913 describes inventions by the inventors named in the above-identified application, and not inventions of inventors named in U.S. Patent No. 6,416,931 and not named as inventors in the above-identified application. Note also the statement in Item 6 on page 3 of the above-identified application, that the inventorship of the subject matter claimed in claims 1 and 2 of the above-identified application is correct.

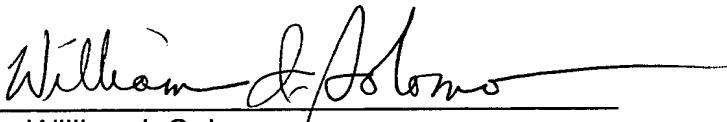
In view of the "unequivocal statement" by the inventors in the enclosed Declaration, it is respectfully submitted that U.S. Patent No. 6,416,913 does not qualify as prior art under 35 USC §102(e), as the subject matter thereof being relied upon by the Examiner is not subject matter "by another"; and that, accordingly, for this reason alone, the rejection set forth in Item 3 on page 2 of the Office Action mailed March 21, 2006, the sole grounds of rejection in this Office Action, has been overcome.

In view of all the foregoing, entry of the enclosed Declaration, and reconsideration and allowance of all claims presently pending in the above-identified application, are respectfully requested.

Please charge any shortage in fees due in connection with the filing of this paper to Deposit Account of Antonelli, Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (case No. 511.36276VV3), and please credit any excess fees to such deposit account.

Respectfully submitted,

**ANTONELLI, TERRY, STOUT & KRAUS, LLP**

By   
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Enclosure: Declaration Under 37 CFR 1.132 (4 pp., executed)

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